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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225381
Party	Plaintiff Zenith Optimedia Group Limited
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Submission	Motion to Suspend for Civil Action
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Signature	/Stephen F. Roth/
Date	01/08/2016
Attachments	10. first amended complaint (corrected) 07-24-15.pdf(944838 bytes ) Second Joint motion to suspend proceedings.pdf(14990 bytes )

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*Attorneys for Plaintiffs Zenith Optimedia Group Limited and  
 Moxie Marketing Services LLC*

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK**

ZENITH OPTIMEDIA GROUP LIMITED and	:	
MOXIE MARKETING SERVICES LLC,	:	<b>ECF CASE</b>
	:	
Plaintiffs,	:	Civil Action No. 15-cv-04041 (KMW)
	:	
v.	:	District Judge Kimba M. Wood
	:	Magistrate Judge
MOXIE SOFTWARE, INC.,	:	
	:	
Defendant.	:	
	:	
	:	X

**CORRECTED COMPLAINT**

Plaintiffs Zenith Optimedia Group Limited and Moxie Marketing Services LLC, through their counsel, hereby submit this corrected version of the Complaint (Doc.1) filed May 27, 2015 that includes inadvertently omitted page 9, and therefore for their complaint against Defendant Moxie Software, Inc., allege as follows:

**JURISDICTION AND VENUE**

1. This is an action in which the Plaintiffs are seeking pecuniary and injunctive relief from acts of the Defendants arising under the trademark and unfair competition laws of the United States, 15 U.S.C. §§ 1051 *et seq.*, and for related claims under the common law of the State of New York arising out of the same operative facts.

2. Jurisdiction is proper in this United States district court pursuant to 28 U.S.C. §§ 1331, 1338(a), and (b), and 15 U.S.C. § 1121.

3. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c).

### **PARTIES**

4. Plaintiff Zenith Optimedia Group Limited (“ZenithOptimedia”) is a limited liability company under the laws of the United Kingdom, having a place of business at 24 Percy Street, London W1T 2BS.

5. Plaintiff Moxie Marketing Services LLC (“Moxie”) is a limited liability company under the laws of the State of Delaware, having a place of business at 299 West Houston Street, New York, New York 10014.

6. Upon information and belief, Defendant Moxie Software, Inc. (“Moxie Software”) is a corporation of the State of Delaware, having a place of business at 150 Mathilda Place, Sunnyvale, California 94086.

7. Upon information and belief, Moxie Software advertises its services and has provided its services throughout the United States, including within the State of New York and this judicial district.

### **PLAINTIFFS’ ESTABLISHED RIGHTS TO THE MOXIE TRADEMARK**

8. ZenithOptimedia is a leading worldwide provider of media services, communication strategy support, advertising and marketing services, production and post-production services, hosting of online web facilities, and digital and interactive services.

9. Since at least as early as 2003, Moxie Interactive Inc. adopted and used the trademark MOXIE to identify a full range of services, including advertising and marketing services, printing services, production and post-production services, interactive website services, and hosting online web facilities.

10. The assets of Moxie Interactive Inc. were purchased by Zenith Media Services, Inc., and subsequently were transferred to Moxie Marketing Services LLC. Moxie Marketing has extensively used the trademark MOXIE to identify its full range of services including advertising and marketing services, printing services, production and post-production services, interactive website services, and hosting online web facilities.

11. ZenithOptimedia is the owner of United States Trademark Registration No. 4,564,356, registered July 8, 2014 and covering the following services:

Class 35: Advertising and marketing services; advertising and promotional services; brand consultancy and brand creation services; brand evaluation services; brand positioning; brand evaluation services, namely, brand testing; marketing and branding services, namely, performing consumer insight and brand strategy of company logos; marketing and advertising media management services; media buying services, namely, purchasing time and space for the delivery of advertising messages through broadcast time, print space, indoor space, outdoor space or other media such as CDs and DVDs or website space/time; sponsorship consultancy services related to promoting the goods and services of others by arranging for sponsors to affiliate their goods with others; market research; compilation, processing and analysis of market research statistics; production of advertisements for radio, video, film, computers, Internet web sites, televisions and mobile devices; all the aforesaid services also provided on-line via computer websites or through wireless transmissions; compilation of direct mailing lists; compilation of mailing lists; direct mail advertising; marketing by mail; preparation of mailing lists; preparation of mailing lists for direct mail advertising services; direct marketing, database marketing, namely, compiling and systemization of information into consumer specific databases for marketing purposes; telemarketing; statistical analysis and reporting for business purposes; database management; business consulting services in the field of electronic commerce; advertising and marketing management agency services, namely, the creation, development and dissemination of advertising and promotional materials via direct mail, newspaper, radio, television, mobile devices, a global computer network and other interactive media, research services and information services relating to advertising, marketing, brand management, media buying, and media management; design of publicity and advertising materials; creation, research, development and implementation of brand names, slogans, lettering and logos; mobile advertisements and direct mail advertisements; computer services, namely, design of internet advertising, namely, designing and implementing banner advertisements; providing websites that promote the goods and services of others; providing an interactive website in the field of marketing, advertising, advertising media, and politics; information, consultancy and advisory services, in the field of marketing and advertising.

Class 40: Printing services, namely, digital photo printing services, digital printing services of books and other documents.

Class 41: Sound and video recording production and post production services to the advertising, motion picture, video, broadcast, satellite, cable and television industries; video post-production, adding visual effects and graphics to video tape, audio tape, digital media and film; consultation services related to sound, video and ancillary production and post production in the field of music, video, and film; film and animation production services; providing an interactive website in the field of entertainment, photography, music, sports and education.

Class 42: Hosting online web facilities for others for organizing and conducting interactive discussions.

A copy of this Registration is attached as Exhibit A. This Registration is in full force and effect and grants ZenithOptimedia the exclusive right to use the registered mark MOXIE in commerce for the goods and services covered by the Registration

12. Moxie is an affiliate of ZenithOptimedia and has been licensed to use the MOXIE trademark. Moxie has extensively advertised its services in connection with the MOXIE marks, including advertising through its website.

13. The mark MOXIE has been associated with substantial sales for Moxie's high-quality services, including the marketing of media services, communication strategy, and digital and interactive services.

14. By virtue of Moxie's extensive use, advertising and sales, the mark MOXIE has come to be associated exclusively with services provided by Moxie. As a result, the mark MOXIE has become an extremely valuable asset of Moxie and has come to represent the company's extensive good will.

#### **DEFENDANTS' WRONGFUL ACTS**

15. Long after Moxie had adopted and used extensively the mark MOXIE, Moxie Software began use of the marks MOXIE, MOXIE SOFTWARE, MOXIE CONCIERGE, and GO MOXIE for software and nondownloadable application software for a variety of

applications, including for websites and consulting services for businesses, such as hosting online meetings and interactive discussions.

16. When it was originally incorporated, Defendant was known as nGenera Corporation and identified its services by marks that would not be confused with ZenithOptimedia's MOXIE mark, such as SPACES, NGENERA, SENIOR EXECUTIVE CONCOURS, and IT CONCOURS.

17. Upon information and belief, at some date in 2010, Defendant decided to adopt the mark MOXIE SOFTWARE for its goods and services, which is confusingly similar to the MOXIE mark then used by Moxie for its services.

18. On September 9, 2010, Defendant, then known as nGenera Corporation, started by filing three separate Trademark Applications Nos. 85/126,487; 85/126,488; 85/126,489; and 85/126,491 to register the mark MOXIE SOFTWARE for services in classes 9, 35, 38, and 42, respectively.

19. For each of the four applications filed by Defendant for the mark MOXIE SOFTWARE, the United States Patent and Trademark Office ("USPTO") issued an Office Action on December 18, 2010, stating that the mark MOXIE SOFTWARE may create a likelihood of confusion with ZenithOptimedia's then-pending application to register the mark MOXIE. The USPTO suspended action on each of Defendant's applications to register the mark MOXIE SOFTWARE.

20. Once ZenithOptimedia's application to register the mark MOXIE was granted as Registration No. 4,564,356 on July 8, 2014, the USPTO issued Office Actions on September 8, 2014, for Defendant's MOXIE SOFTWARE applications, comparing the similarities of the marks and the goods and services, and refusing registration for the mark MOXIE SOFTWARE

on the ground that “since the marks are similar and the goods and services are similar in part and closely related in part, there is a likelihood of confusion between the marks.”

21. In responses filed on March 9, 2015, Moxie Software argued that the Examining Attorney should withdraw the refusal to register because there would be no likelihood of confusion between Defendant’s mark MOXIE SOFTWARE and ZenithOptimedia’s mark MOXIE.

22. On April 8, 2015, the USPTO issued a final rejection of each of Defendant’s applications on the ground of a likelihood of confusion with ZenithOptimedia’s registered mark MOXIE. In each such Office Action, the USPTO considered and rejected the arguments by Defendant’s counsel that there would be no likelihood of confusion, and concluded:

Therefore, since the marks are similar and the services are similar in part and closely related in part, there is a likelihood of confusion between the marks and the refusal of registration is hereby repeated and made **FINAL** in accordance with the Trademark Act. Trademark Act Section 2(d), 15 U.S.C. § 1052(d); *see* TMEP § § 1207.01 *et seq.*

23. As a result of these communications, Defendant has been aware since at least December 18, 2010, of ZenithOptimedia’s prior rights to the mark MOXIE for its services, and has been aware since at least September 8, 2014, that the USPTO believes there to be a likelihood of confusion between Defendant’s mark MOXIE SOFTWARE and ZenithOptimedia’s mark MOXIE.

24. Despite Defendant’s knowledge of ZenithOptimedia’s rights to the MOXIE trademark and the statements by the USPTO regarding a likelihood of confusion, Defendant has undertaken a program since about 2010 of progressively expanding its use and reliance on trademarks having as the dominant portion the word MOXIE. This program has included a change to Defendant’s corporate name from nGenera Corporation to Moxie Software, Inc.,



adoption of and filing for trademark applications for the marks MOXIE, MOXIE CONCIERGE, and GO MOXIE, and an increased emphasis and advertising under MOXIE-based trademarks.

25. In addition to the four MOXIE SOFTWARE trademark applications, Defendant's applications to register the marks MOXIE (Applications Nos. 86/481,892 and 86/481,280); and MOXIE CONCIERGE (Application No. 86/481,979) have also been rejected by the USPTO on the ground of a likelihood of confusion with ZenithOptimedia's registered mark MOXIE.

26. The sole exception has been Defendant's Application No. 86/280,443 to register the mark MOXIE CONCIERGE for services in class 42, which was allowed and published, but for which ZenithOptimedia is filing a Notice of Opposition on the ground of likelihood of confusion with its registered mark MOXIE.

27. Upon information and belief, Defendant has profited richly by its use of the MOXIE SOFTWARE, MOXIE, GO MOXIE, MOXIE CONCIERGE, and MOXIE-based trademarks in terms of promoting its business and obtaining profits for its services.

**FIRST CLAIM FOR RELIEF**  
**Infringement Of Federal Trademark Registration**

28. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-27, as if fully set forth herein.

29. Defendant's marks MOXIE, MOXIE SOFTWARE, MOXIE CONCIERGE, and GO MOXIE are reproductions, counterfeits, copies, or colorable imitations of ZenithOptimedia's registered mark MOXIE covered by U.S. Registration No. 4,564,356.

30. Defendant uses the names and marks MOXIE, MOXIE SOFTWARE, MOXIE CONCIERGE, and GO MOXIE in the advertising and providing of services and goods that are closely related to and may overlap the services and goods that Moxie provides in association with the mark MOXIE.



31. Defendant's goods and services are provided through the same channels of trade and to the same classes of customers as are the services and goods of Moxie provided in connection with the registered trademark MOXIE.

32. Defendant began use of the mark MOXIE SOFTWARE after Plaintiffs had established rights to the MOXIE mark and expanded the use of the MOXIE mark to the marks MOXIE, MOXIE CONCIERGE, and GO MOXIE after being informed by the USPTO that any such use of its marks in the United States may constitute trademark infringement.

33. Defendant's conduct as set forth above constitutes infringement of ZenithOptimedia's federally registered trademark MOXIE under 15 U.S.C. § 1114.

34. Defendant's conduct has caused and will continue to cause substantial damage to Plaintiffs unless enjoined by this Court.

35. Upon information and belief, Defendant's conduct, including commencement of infringement and its progressive encroachment on Plaintiffs' rights to the mark MOXIE after notice of Plaintiffs' rights and likely infringement by the USPTO, constitutes willful and malicious infringement of Plaintiffs' trademark rights.

36. Plaintiffs are without adequate remedy at law.

**SECOND CLAIM FOR RELIEF**  
**Violation Of Section 43(a) Of The Lanham Act**

37. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-36, as if fully set forth herein.

38. Defendant, by use of the marks and names MOXIE SOFTWARE, MOXIE, MOXIE CONCIERGE, and GO MOXIE in connection with its goods and services, has used false designations of origin and false descriptions and representations, which tend falsely to describe or represent such goods and services and has caused such goods and services to enter

into commerce with full knowledge of the falsity of such designations of origin, all to the detriment and damage of Plaintiffs.

39. Defendant's conduct as set forth above was undertaken in violation of 15 U.S.C. § 1125(a) and has caused and will continue to cause irreparable injury to Plaintiffs unless enjoined by this Court.

40. Upon information and belief, Defendant's conduct was done willfully with full knowledge of the falsity of the designations of origin and with the intention of causing confusion and misleading and deceiving the public as to the origin of its goods and services.

41. Plaintiffs are without adequate remedy at law.

**THIRD CLAIM FOR RELIEF**  
**Common-Law Trademark Infringement And Unfair Competition**

42. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-41, as if fully set forth herein.

43. Defendant, by its actions alleged above, has willfully, knowingly, and intentionally engaged in acts constituting unfair competition under the common law of the State of New York.

44. Upon information and belief, Defendant is improperly trading on the reputation and goodwill of Plaintiffs in association with the MOXIE trademark.

45. Defendant's conduct has caused and will continue to cause irreparable injury to Plaintiff unless enjoined by this Court.

46. Plaintiffs are without adequate remedy at law.

WHEREFORE, Plaintiffs request the following relief:

A. a permanent injunction enjoining Defendant Moxie Software, Inc., its officers, employees, servants, and agents, and all persons in active concert or participation with them,

from using the marks MOXIE, MOXIE SOFTWARE, MOXIE CONCIERGE, GO MOXIE, or any other name or trademark that contains the word MOXIE, or any other name or trademark that would be confusingly similar to ZenithOptimedia's trademark MOXIE;

B. an order to the Defendant Moxie Software, Inc., to expressly abandon Application No. 86/280,443 because it creates a likelihood of confusion with Plaintiffs' rights to the mark MOXIE;

C. an accounting to determine the profits Defendant has made in connection with all products sold and services rendered under use of the marks MOXIE, MOXIE SOFTWARE, MOXIE CONCIERGE, and GO MOXIE, and an award to Plaintiffs of all such profits;

D. an award of compensatory damages arising out of Defendant's infringement and a trebling of such award, as provided by 15 U.S.C. § 1117;

E. a direction to Defendant to deliver up to Plaintiffs for destruction all printed materials that contain any of the marks MOXIE, MOXIE SOFTWARE, MOXIE CONCIERGE, and GO MOXIE;

F. an award to Plaintiffs of its reasonable attorney fees and costs in the action; and

G. such other and further relief as the Court may deem just and necessary.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
*Attorneys for Plaintiffs Zenith Optimedia  
Group Limited and Moxie Marketing  
Services, LLC*

Dated: July 24, 2015

By: s/Charles P. Kennedy  
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**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 1.6(a)**

The undersigned hereby certifies, pursuant to Local Civil Rule 1.6(a), that with respect to the matter in controversy herein, Plaintiff ZenithOptimedia Group Limited is not aware of any other action pending in any court, or of any pending arbitration or administrative proceeding, to which this matter is subject.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
*Attorneys for Plaintiffs ZenithOptimedia  
Group Limited and Moxie Marketing  
Services, LLC*

Dated: July 24, 2015

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# **EXHIBIT A**

# United States of America

United States Patent and Trademark Office

# MOXIE

**Reg. No. 4,564,356**

**Registered July 8, 2014**

**Int. Cls.: 35, 40, 41, and  
42**

**SERVICE MARK**

**PRINCIPAL REGISTER**

ZENITH OPTIMEDIA GROUP LIMITED (UNITED KINGDOM LIMITED LIABILITY COMPANY)

KENSINGTON VILLAGE AVONMORE ROAD  
PEMBROKE BUILDING  
LONDON W14 8DG, UNITED KINGDOM

FOR: ADVERTISING AND MARKETING SERVICES; ADVERTISING AND PROMOTIONAL SERVICES; BRAND CONSULTANCY AND BRAND CREATION SERVICES; BRAND EVALUATION SERVICES; BRAND POSITIONING; BRAND EVALUATION SERVICES, NAMELY, BRAND TESTING; MARKETING AND BRANDING SERVICES, NAMELY, PERFORMING CONSUMER INSIGHT AND BRAND STRATEGY OF COMPANY LOGOS; MARKETING AND ADVERTISING MEDIA MANAGEMENT SERVICES; MEDIA BUYING SERVICES, NAMELY, PURCHASING TIME AND SPACE FOR THE DELIVERY OF ADVERTISING MESSAGES THROUGH BROADCAST TIME, PRINT SPACE, INDOOR SPACE, OUTDOOR SPACE OR OTHER MEDIA SUCH AS CDS AND DVDS OR WEBSITE SPACE/TIME; SPONSORSHIP CONSULTANCY SERVICES RELATED TO PROMOTING THE GOODS AND SERVICES OF OTHERS BY ARRANGING FOR SPONSORS TO AFFILIATE THEIR GOODS WITH OTHERS; MARKET RESEARCH; COMPILATION, PROCESSING AND ANALYSIS OF MARKET RESEARCH STATISTICS; PRODUCTION OF ADVERTISEMENTS FOR RADIO, VIDEO, FILM, COMPUTERS, INTERNET WEB SITES, TELEVISION AND MOBILE DEVICES; ALL THE AFORESAID SERVICES ALSO PROVIDED ON-LINE VIA COMPUTER WEBSITES OR THROUGH WIRELESS TRANSMISSIONS; COMPILATION OF DIRECT MAILING LISTS; COMPILATION OF MAILING LISTS; DIRECT MAIL ADVERTISING; MARKETING BY MAIL; PREPARATION OF MAILING LISTS; PREPARATION OF MAILING LISTS FOR DIRECT MAIL ADVERTISING SERVICES; DIRECT MARKETING, DATABASE MARKETING, NAMELY, COMPILING AND SYSTEMIZATION OF INFORMATION INTO CONSUMER SPECIFIC DATABASES FOR MARKETING PURPOSES; TELE-MARKETING; STATISTICAL ANALYSIS AND REPORTING FOR BUSINESS PURPOSES; DATABASE MANAGEMENT; BUSINESS CONSULTING SERVICES IN THE FIELD OF ELECTRONIC COMMERCE; ADVERTISING AND MARKETING MANAGEMENT AGENCY SERVICES, NAMELY, THE CREATION, DEVELOPMENT AND DISSEMINATION OF ADVERTISING AND PROMOTIONAL MATERIALS VIA DIRECT MAIL, NEWSPAPER, RADIO, TELEVISION, MOBILE DEVICES, A GLOBAL COMPUTER NETWORK AND OTHER INTERACTIVE MEDIA; RESEARCH SERVICES AND INFORMATION SERVICES RELATING TO ADVERTISING, MARKETING, BRAND MANAGEMENT, MEDIA BUYING, AND MEDIA MANAGEMENT; DESIGN OF PUBLICITY AND ADVERTISING MATERIALS; CREATION, RESEARCH, DEVELOPMENT AND IMPLEMENTATION OF BRAND NAMES, SLOGANS,



*Nichelle K. Lee*

Deputy Director of the United States  
Patent and Trademark Office

**Reg. No. 4,564,356** LETTERING AND LOGOS; MOBILE ADVERTISEMENTS AND DIRECT MAIL ADVERTISEMENTS; COMPUTER SERVICES, NAMELY, DESIGN OF INTERNET ADVERTISING, NAMELY, DESIGNING AND IMPLEMENTING BANNER ADVERTISEMENTS; PROVIDING WEBSITES THAT PROMOTE THE GOODS AND SERVICES OF OTHERS; PROVIDING AN INTERACTIVE WEBSITE IN THE FIELD OF MARKETING, ADVERTISING, ADVERTISING MEDIA, AND POLITICS; INFORMATION, CONSULTANCY AND ADVISORY SERVICES, IN THE FIELD OF MARKETING AND ADVERTISING, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 11-18-2003; IN COMMERCE 11-18-2003.

FOR: PRINTING SERVICES, NAMELY, DIGITAL PHOTO PRINTING SERVICES, DIGITAL PRINTING SERVICES OF BOOKS AND OTHER DOCUMENTS, IN CLASS 40 (U.S. CLS. 100, 103 AND 106).

FIRST USE 11-18-2003; IN COMMERCE 11-18-2003.

FOR: SOUND AND VIDEO RECORDING PRODUCTION AND POST PRODUCTION SERVICES TO THE ADVERTISING, MOTION PICTURE, VIDEO, BROADCAST, SATELLITE, CABLE AND TELEVISION INDUSTRIES; VIDEO POST-PRODUCTION, ADDING VISUAL EFFECTS AND GRAPHICS TO VIDEO TAPE, AUDIO TAPE, DIGITAL MEDIA AND FILM; CONSULTATION SERVICES RELATED TO SOUND, VIDEO AND ANCILLARY PRODUCTION AND POST PRODUCTION IN THE FIELD OF MUSIC, VIDEO, AND FILM; FILM AND ANIMATION PRODUCTION SERVICES; PROVIDING AN INTERACTIVE WEBSITE IN THE FIELD OF ENTERTAINMENT, PHOTOGRAPHY, MUSIC, SPORTS, AND EDUCATION, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 11-18-2003; IN COMMERCE 11-18-2003.

FOR: HOSTING ONLINE WEB FACILITIES FOR OTHERS FOR ORGANIZING AND CONDUCTING INTERACTIVE DISCUSSIONS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 11-18-2003; IN COMMERCE 11-18-2003.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

PRIORITY CLAIMED UNDER SEC. 44(D) ON ERPN CMNTY TM OFC APPLICATION NO. 006380241, FILED 10-19-2007, REG. NO. 006380241, DATED 1-23-2009, EXPIRES 1-23-2019.

OWNER OF U.S. REG. NO. 3,034,671.

SN 77-397,129, FILED 2-14-2008.

KAREN K. BUSH, EXAMINING ATTORNEY



**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***  
**What and When to File:**

**First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

**Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
See 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***  
**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE:** Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Zenith Optimedia Group Limited,	:
	:
Opposer,	:
	:
v.	: Opposition No. 91225381
	:
Moxie Software, Inc.,	:
	:
Applicant.	:
_____	X

**SUPPLEMENTAL SUBMISSION OF PLEADING IN  
SUPPORT OF JOINT MOTION TO SUSPEND PROCEEDINGS**

On January 6, 2016, Opposer, Zenith Optimedia Group Limited, and Applicant, Moxie Software, Inc., through their undersigned attorneys, jointly requested that the Trademark Trial and Appeal Board suspend all proceedings in the present opposition until termination of the civil action, *Zenith Optimedia Group Limited and Moxie Marketing Services LLC v. Moxie Software, Inc.*, No. 15-cv-04041 before the United States District Court for the Southern District of New York, filed May 27, 2015.

The Board requested that the parties submit a copy of the Complaint to ascertain whether the final determination of the civil action will have a bearing on this proceeding. Attached hereto is a copy of the operative pleading in the action, namely, the Corrected Complaint, filed on July 24, 2015 (Dkt. 10). With this submission, the parties request that the Board consider their Joint Motion to Suspend the Proceedings.

Respectfully submitted,

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Dated: January 8, 2016

By /Stephen F. Roth/  
Stephen F. Roth

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Tel. 212.909.6000

Dated: January 8, 2016

By /David H. Bernstein/  
David H. Bernstein

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the within Supplemental Submission of Pleading in Support of Joint Motion to Suspend Proceedings was served upon the following counsel of record this 8th day of January, 2016, as follows:

**VIA E-MAIL**

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\_\_\_\_\_  
/Stephen F. Roth/  
Stephen F. Roth